87-1670

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RICHARD T. DURJAK,

Appellant,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

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Dated: April 11, 1988

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QUESTIONS PRESENTED FOR REVIEW

1. Whether an individual has the inherent right to pursue a lawful vocation and thereby increase his or her property without being subjected by the State to a privilege tax for exercising such right.

2. Whether a criminal defendant has a due process right to present before the jury evidence of his good faith when the offenses charged required proof of willfulness.

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In The

Supreme Court of the United States

October Term, 1987

RICHARD T. DURJAK,

Appellant,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From The Supreme Court Of Illinois

JURISDICTIONAL STATEMENT

OPINION BELOW

The Illinois Supreme Court did not issue an opinion. Instead, on December 22, 1987, it entered an order denying appellant leave to appeal. See Appendix 1. The Illinois Appellate Court, First District, affirmed appellant's conviction on July 9, 1987, in an unpublished order. See Appendix 2. A petition for rehearing was denied on August 24, 1987. See Appendix 3.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2). The final order of the Illinois Supreme Court was entered on December 22, 1987. Appendix 1. On March 17, 1988, Justice John Paul Stevens extended the time for filing this Jurisdictional Statement to April 11, 1988. Appendix 7.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth, Ninth, Tenth and Fourteenth Amendments of the U.S. Constitution in pertinent part provide:

Amendment V

> No person shall . . . be deprived of life, liberty, or property, without due proces of law; nor shall private property be taken for public use, without just compensation.

Amendment IX

> The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIV

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, the Bill of Rights of the Constitution of the State of Illinois (1970) at Sections 1, 2 and 24, provide in pertinent part:

> Section 1. Inherent and Inalienable Rights.
>
> All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.
>
> Section 2. Due Process and Equal Protection.
>
> No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.
>
> Section 24. Rights Retained.
>
> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.

Sections 2-201, 2-203 and 13-1301 of the Illinois Income Tax, Ill.Rev.Stat., ch. 120, in pertinent part provide:

> Section 2-201. Tax imposed.
>
> (a) In general. A tax measured by net income is hereby imposed on every individual . . . on the privilege of earning or receiving income in or as a resident of this State.

Section 2-203. Base income defined.

(a) Individuals.

(1) In general. In the case of an individual, base income means an amount equal to the taxpayer's adjusted gross income for the taxable year as modified by paragraph (2).

(2) Modifications. The adjusted gross income referred to in paragraph (1) shall be modified by . . . deducting from the total so obtained the sum of the following amounts:

> (H) An amount equal to all amounts included in such total which are exempt from taxation by this State either by reason of its Constitution or by reason of the Constitution, treaties or statutes of the United States.

Section 2-203(d)(2)

(d) Gross income; adjusted income; taxable income.

(2) Special rule. For purposes of paragraph (1) of this subsection, the taxable income properly reportable for federal income tax purposes shall mean:

> (A) Certain life insurance companies. In the case of a life insurance company subject to the tax imposed by Section 802 of the Internal Revenue Code, life insurance company taxable income;
>
> (B) Certain mutual insurance companies. In the case of a mutual insurance company subject to the tax imposed by Section 821(a) or (c) of the Internal Revenue Code, mutual insurance company taxable income or taxable investment income, as the case may be;
>
> (C) Regulated investment companies. In the case of a regulated investment company subject to the tax imposed by Section 852 of the Internal Revenue Code, real estate investment trust taxable income;

(D) Real estate investment trusts. In the case of a real estate investment trust subject to the tax imposed by Section 857 of the Internal Revenue Code, real estate investment trust taxable income;

(E) Consolidated corporations. In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, taxable income determined as if such corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this subparagraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all such years; and

(F) Cooperatives. In the case of a cooperative corporation or association, the taxable income of such organization determined in accordance with the provisions of Sections 1381 through 1388 of the Internal Revenue Code.

Section 13-1301

"Any person who is subject to the provisions of this Act and who willfully fails to file a return" shall be guilty of an offense against the People of the State of Illinois.

STATEMENT OF THE CASE

Appellant, RICHARD T. DURJAK, was charged in two misdemeanor complaints with three counts of failure to file State income tax returns for the years 1980, 1981 and 1982. R.2 R.2A, 3B[1]. DURJAK moved to dismiss these charges prior to trial (R. 22B), in part on the basis he was not required to file the returns in question because his earning a livelihood by a lawful vocation was not a privilege. He alleged it was an inherent right, and as such, not an event taxable in the guise of a privilege tax. (R. 22B).

The trial court, in an oral ruling in chambers and off the record, denied DURJAK's motion, reasoning if DURJAK was allowed to prevail, "no one would pay". The motion was denied on January 30, 1984. R.49B; ST.7.

The trial commenced April 29, 1985. DURJAK's defense was that he had acted in good faith, on the belief he was not required to file returns; that he had not voluntarily and intentionally violated any known legal duty to file returns. T.73-103.

As an integral element of his defense, DURJAK offered into evidence two letters he had written to the Illinois Department of Revenue (IDOR) in 1981, asking if he was required to file returns.

The first letter was written on January 7, 1981. T.80. Marked as Defendant's Exhibit 1, it was offered into evi-

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[1] R. refers to the record on appeal (A as to 83-MC1-103178; B as to 83 MC1-103179); T. refers to the trial transcript; ST. refers to the sentencing transcript.

dence but the trial court sustained the prosecution's objection to it. (T.61-63). The court then cut off DURJAK's testimony about the letter (T.81-82), thereby preventing the jury from hearing evidence in this regard.

DURJAK wrote the letter to get confirmation from the IDOR of his belief that filing a return was voluntary. He received no response to the first letter, so on September 18, 1981, he wrote the IDOR again. (T.94). The court refused to allow this second letter, marked as Defendant's Exhibit 2, into evidence as well. (T.95). Both letters can be found at Appendix 5 and 6 respectively.

The court repeated its ruling on the inadmissibility of the letters at a side bar conference. (T.97-100). DURJAK moved for a mistrial because of the exclusion of these letters, but his motion was denied. (T.103).

In post trial proceedings, DURJAK moved for a new trial for a variety of reasons, including the exclusion of the letters; he also moved for the court to make findings of fact and conclusions of law on his motion to dismiss so the appellate court would have something to review. These motions are in the record following R.72A. Each of DURJAK's post trial motions were denied without elucidation. (ST.12).

DURJAK filed a Notice of Appeal from his conviction on July 3, 1985. (R.71A). On appeal, DURJAK again requested *inter alia* remand of his case to the trial court for entry of findings of fact and conclusions of law on his motion to dismiss. He also argued the trial court had committed reversible error by excluding the letters he had written to IDOR.

The Illinois Appellate Court affirmed DURJAK's conviction on July 9, 1987. Appendix 3. It denied his Petition for Rehearing on August 24, 1987. Appendix 2. On De-

cember 22, 1987, the Supreme Court of Illinois denied DURJAK's Petition For Leave To Appeal. Appendix 1.

On March 15, 1988, DURJAK filed his Notice of Appeal to this Court in the Illinois Supreme Court. Appendix 4.

STATEMENT AS TO SUBSTANTIALITY

A. The Inherent Right To Earn A Livelihood Is Not A Taxable Privilege.

The primary question raised by this appeal is whether an individual residing in the United States of America still has the right to acquire, possess and enjoy private property without the State imposing a privilege tax on the exercise of the right.

Both the federal and the State Constitutions profess to protect the private use and enjoyment of such property. The notion of the right to private ownership of property is perhaps the grundnorm of our Republic.

The Constitution guarantees the right to life, liberty and the pursuit of happiness. Earning a living by engaging in a lawful vocation is one of those inalienable rights which was so basic to our nation that it went without saying; it was not spelled out in black and white. It is certainly one of the rights retained by the people, protected by Amendments 9, 10, and 14 of the U.S. Constitution and by Sections 1, 2 and 24 of the Illinois Constitution.

By giving this appeal plenary consideration, this Court can answer the question of whether the phrase "inalienable rights" has become an oxymoron in America of the 1980's. This Court can answer the question of whether

it will allow one of our most cherished rights to be perversely converted by the State of Illinois into a "privilege" which can be subjected to a tax. This Court can answer the question of whether the inherent right to engage in a lawful vocation can give rise to a taxable privilege in view of our cherished history to the contrary.

On the 12th of June, 1776, the colony of Virginia adopted its DECLARATION OF RIGHTS. The first and foremost right set forth in the Virginia Declaration is as follows:

> That all men are created equally free and independent and have certain inherent natural rights of which they cannot, by any compact, deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness and safety.

Virginia Declaration of Rights, Article 1, June 12, 1776.

The Illinois Income Tax is, in fact, a tax on the so-called "privilege" of earning or receiving income as a resident of the State. Ill.Rev.Stat., ch. 120, Section 2-201. While the tax is measured by net income, it is imposed on the privilege of earning or receiving income as a resident of the State. *Thorpe v. Mahin*, 43 Ill. 2d 36 (1969).

The lower courts simply misapprehended the crux of DURJAK's attack on the criminal complaints. DURJAK was not suggesting the entire Act was unconstitutional. He was arguing, on the contrary, he was not required to file a return because he had the right, under both the State and federal Constitutions, to exclude from his net income the fruits of the labor he received by exercising his inherent right to earn a living.

The Illinois Income Tax exempts from taxation, any income which is not taxable by reason of either the federal

or the State Constitutions. Ill.Rev.Stat., ch. 120, Section 2-203(a)(2)(H). DURJAK argued, in his motion to dismiss and in the Appellate briefs, he had not engaged in any privilege by working for a living nor by being paid for his work. Such activity is an inherent right, not a taxable privilege.

The Illinois Constitution, at Article 1, Section 1, recognizes all men have inherent and inalienable rights, "among which are life, liberty and the pursuit of happiness." It also recognizes, in Section 2 of Article 1, the rights of due process and equal protection; that no person shall be deprived of life, liberty or property without due process of law.

Section 2 parallels the protections of the Fifth Amendment in the U.S. Constitution. No deprivation of life, liberty or property, without due process of law. No taking of private property—such as the fruits of one's labor—for the public use, without just compensation.

The Tennessee Supreme Court, in 1932 recognized this fundamental concept. It declared the Tennessee income tax unconstitutional because it attempted to tax, as a privilege, the fundamental right to earn a living. *Evans v. McCabe*, 164 Tenn. 672, 52 S.W. 2d 159 (1932). Where is the equal protection of the law if a fundamental right in Tennessee is allowed to be taxed as a privilege in Illinois? What do the Fifth and Fourteenth Amendments mean if this is so.

The substantiality in this appeal rests in the answer to the question of whether this Court will allow equal protection of the law, guaranteed by the Fifth and Fourteenth Amendments, to have a real meaning today, as it did when the right was enshrined in both the U.S. and the State Constitutions.

The Tennessee Supreme Court spoke again to this issue in 1960. One year earlier, the Tennessee legislature tried once again to insert the hand of the State into the pockets of its citizens through an income tax. This time, the tax act specifically stated:

> This tax shall not be construed as a tax on the privilege of carrying on business in Tennessee, the same being upon the privilege of being in receipt of or realizing net earnings in Tennessee.

Ch. 252, P.A. of 1959.

The Tennessee Supreme Court saw right through this ruse. In *Jack Cole Co. v. McFarland*, 206 Tenn. (10 McCanless) 694, 337 S.W. 2d 25 (1960), the Court declared the tax unconstitutional. It held:

> realizing and receiving income on earnings is not a privilege that can be taxed.

Jack Cole, Id., at 206 Tenn. 698. The Court stated the legislature could name any privilege a taxable privilege, but it could not name something to be a taxable privilege unless it was first a privilege.

Since the right to receive income or earnings was a right belonging to every person, it could not be taxed as a privilege in Tennessee. 206 Tenn. 699. This Court cannot allow such a fundamental right to be taxed as a privilege in Illinois.

The right to receive income or earnings is of sufficient importance for this Court to give this appeal plenary review. The right is enshrined in our Declaration of Independence. It is protected by Article 1, Section 1 of the Illinois Constitution, by Sections 2 and 24 of that Constitution, and by the Ninth, Tenth and Fourteenth Amendments of the U.S. Constitution.

The right to be free from public taking of private property without just compensation is protected by the Fifth and the Fourteenth Amendments. The State cannot take private property for public use in the guise of a privilege tax imposed on an inherent right.

This Court recognized the right to work as an inherent right over one century ago in another context in *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746 (1884) where this Court stated:

> Among these inalienable rights, as proclaimed in (the Declaration of Independence), is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their property or develop their faculties, so as to give them their highest enjoyment.

This highest enjoyment is possible under the Illinois Tax Act if its application is restricted to its terms. Section 2-203(d)(2) limits the phrase "taxable income", to income properly reportable for federal income tax purposes by certain specified insurance companies, corporations and investment trusts. It does not include individuals in its terms.

Each of the entities set forth in Section 2-203(d)(2) are artificial persons who exist by virtue of a State created privilege. Their receipt of income is truly a privilege and can be the subject of a valid tax on that privilege.

Individuals are not artificial creations of the State. Their inherent right to work at a lawful vocation, and earn a living thereby, is not a privilege and cannot be taxed as such. One cannot be penalized for exercising an inherent right by the imposition of a privilege tax on the exercise of that right.

Whether individuals will continue to have the right to private ownership of property, free from the ever increasing encroachment by the State, is most definitely a subject worthy of this Court's plenary consideration.

B. A Criminal Defendant Has The Due Process Right To Present To The Jury Evidence Of His Good Faith When Charged With Willfully Failing To File Tax Returns.

The secondary question presented by this appeal is whether a criminal Defendant should be allowed to present evidence of his good faith as a defense to a charge of willful failure to file State income tax returns.

In *U.S. v. Murdock*, 290 U.S. 389 (1933), this Court ruled that an individual with a bona fide misunderstanding of the law could not be found guilty of willfully violating a criminal tax statute.

DURJAK attempted at trial to present his good faith, bona fide misunderstanding defense. An essential part of his defense consisted of the two letters he had written to IDOR on January 7th and September 18th, 1981. Appendix 5 and 6.

The trial court sustained the prosecution's objections to the admission of those letters. T. 81, 95. The trial court also barred DURJAK's testimony concerning the contents of the letters. As a result, the jury was never fully apprised of the contents of the letters. The jury was never fully apprised of DURJAK's bona fide defense.

These letters, written by DURJAK in 1981, were directly relevant to his state of mind during one of the prosecution years. The letters were direct evidence of DURJAK's beliefs. They were proof of DURJAK's bona fide belief he did not have to file returns. If the belief was not bona

fide, he certainly would not have sent the letters to IDOR.

The Appellate Court found no error in the exclusion of the two letters. It said:

> The trial court excluded three (sic two) letters the defendant claims to have sent the Illinois Department of Revenue in 1981. Because there was no proof that the letters were ever sent, the trial court refused to admit them into evidence . . . Because the evidentiary value of the letters was remote and speculative, it was within the discretion of the trial court to refuse to admit them.

Appendix 3 at page 5.

The substantial question presented by this ruling is whether the Fifth Amendment right to due process has now become obsolete. There was proof the two letters were sent—DURJAK so testified. T.80,94. It was not within the province of either the trial or the appellate court to judge DURJAK's credibility. This was a question for the jury to decide. The jury was never given the chance to weigh the impact of these crucial pieces of evidence.

DURJAK's case rested solely upon his credibility. Would the jury believe he had a bona fide misunderstanding of the law? How could the jury believe he sent the letters if they were not allowed to see them? The Court's ruling on these letters improperly diminished the role of the jury on the issue of willfullness. Any speculation on the effect of these letters must be resolved in DURJAK's favor because he is presumed innocent.

The Appellate Court's misapprehension of the importance of this issue is revealed in its comments concerning willfulness. It said it was unclear whether "under the

Act failure to file tax returns is a specific intent crime . . ." Appendix 3, at page 7. If the court could not comprehend the significance of willfulness to the case, it could not comprehend the significance of the exclusion of DURJAK's letters.

The statute itself could not be more clear. Ill.Rev.Stat., ch. 120, Section 13-1301 specifically states "anyone who willfully fails to file returns." This requires the jury to determine the subjective intent of a defendant charged with violating its provisions. Letters written at the time of the alleged offense are strong evidence of subjective intent.

An incorrect evidentiary ruling with respect to intent or willfulness in a failure to file tax return prosecution constitutes a fundamental error going to the essence of the case.

The substantial question which this Court must decide is whether the fundamental right of due process should be sacrificed on the altar of the State's need to raise revenue. Have we drifted so far from the aspirations of our founding fathers?

CONCLUSION

This appeal should be accepted for plenary consideration.

Respectfully submitted,

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APPENDIX 1

(Letterhead Of)

ILLINOIS SUPREME COURT
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December 22, 1987

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No. 65907 – People State of Illinois, respondent, v. Richard T. Durjak, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on January 13, 1988.

APPENDIX 2

No. 85-1997

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

vs.

RICHARD T. DURJAK,

Defendant-Appellant.

This cause coming to be heard on a Petition For Rehearing filed by Defendant-Appellant, RICHARD T. DURJAK, and the Court now being fully advised in the premises:

IT IS HEREBY ORDERED that the Petition For Rehearing is denied.

DATED at Chicago, Illinois, this 24th day of August, 1987.

/s/ MARY ANN G. MCMORROW
Justice

/s/ GLENN T. JOHNSON
Justice

/s/ MEL R. JIGANTI
Justice

APPENDIX 3

No. 85-1997

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
Fourth Division, July 9, 1987

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

vs.

RICHARD T. DURJAK,

Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable John J. McDonnell, Judge Presiding.

ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23

Following a trial by jury, defendant, Richard Durjak, was convicted of the willful failure to file Illinois income tax returns for 1980, 1981, and 1982. (Ill. Rev. Stat. 1981, ch. 120, par. 13-1301.) Defendant was sentenced to sixty days' confinement in the House of Corrections and a one year probation conditioned upon payment of $1,763.00 restitution to the Illinois Department of Revenue, and the payment of a $1,000.00 fine and $30.00 costs. Defendant appeals. Defendant raises the following issues on appeal: 1) whether the Illinois income tax is constitutional; 2) whether the trial court erred in refusing to dismiss the

complaints against the defendant for failure to state a cause of action; 3) whether the failure of arresting officers to advise the defendant of his *Miranda* rights violates defendant's constitutional rights; 4) whether the jury's finding that the defendant willfully failed to file income tax returns was supported by the evidence; 5) whether the trial court failed in refusing to tender two jury instructions regarding specific intent to the jury; 6) whether the trial court erred in refusing to admit two letters written by the defendant. We affirm.

Stephen Hirsch, a special agent from the Illinois Department of Revenue, filed three misdemeanor complaints against the defendant alleging that the defendant had willfully failed to file an Illinois income tax return for 1980, 1981, and 1982 in violation of Ill. Rev. Stat. 1981, ch. 120, par. 13-1301.

Defendant moved to dismiss these complaints on the grounds that the income tax violated the Illinois Constitution and the United States Constitution and that the arrest of the defendant violated his constitutional rights. The trial court denied defendant's motion.

The defendant testified to the following. Defendant immigrated to the United States from Czechoslovakia in 1965, when he was 25. In Czechoslovakia, defendant had received a degree in engineering. Since 1967 the defendant has worked for the Metropolitan Sanitary District (MSD). Defendant paid income tax and filed returns until 1980. In late 1977 or early 1978 defendant became persuaded that the federal and state income taxes were violative of the state and federal constitutions. He also came to believe that the filing of federal and state income tax returns is voluntary.

The parties stipulated to the following facts. Defendant and his wife filed joint returns for 1972 through 1979. Defendant did not file returns for 1980, 1981, and 1982.

Defendant's MSD supervisor testified that defendant had indeed worked for the MSD from 1980 through 1982 and received paychecks from it. The MSD assistant treasurer testified that defendant earned $22,619.10 in 1980, $24,190.30 in 1981, and $24,921.30 in 1982 and that such earnings were reflected on the W-2 forms for those years. Defendant was convicted and sentenced as noted above.

I. THE CONSTITUTIONALITY OF THE ILLINOIS INCOME TAX

Our opinion in the case of *Durjak v. Thompson* (1986), 144 Ill. App. 3d 594, 494 N.E.2d 589, is dispositive of defendant's challenge of the constitutionality of the Illinois income tax. There, we concluded that the Illinois state income tax is constitutional.

II. THE SUFFICIENCY OF THE STATE'S COMPLAINTS

Durjak alleges two insufficiencies in the complaints. First, he claims that the complaints' failure to allege that he earned a sufficient income to be required to file a return renders the complaints void. Secondly, that the word "income" is never defined in the Illinois Income Tax Act of 1969 (Act) (Ill. Rev. Stat. 1985, ch. 120, par. 1-101 *et seq.*) and therefore the defendant was not subject to tax on the compensation for his labor.

The Illinois Supreme Court has consistently held that the allegation of a criminal offense is sufficient if the accused is apprised, with a reasonable certainty, of the precise nature of the offense. (*People v. Banks* (1979), 75 Ill. 2d 383, 392, 388 N.E.2d 1244; see also *People v. Wisslead* (1985), 108 Ill. 2d 389, 394, 484 N.E.2d 1081.) The complaints against the defendant specifically alleged that the defendant willfully failed to file income tax returns for three years in violation of Ill. Rev. Stat. 1981, ch. 120, par. 13-1301. We find that this allegation was sufficient to inform the defendant of the precise nature of the offense.

Defendant also challenges the application of the Act to him. He claims that section 5-502 of the Act requires only those who are liable to pay taxes to file returns and that to be liable the defendant must earn income. (Ill. Rev. Stat. 1981, ch. 120, par. 5-502.) He then argues that the Act fails to define income, and he therefore cannot be liable. The Act defines taxable income by reference to the Internal Revenue Code. (Ill. Rev. Stat. 1981, ch. 120, par. 2-203(d)(1).) Under the Internal Revenue Code, it is well established that compensation for labor is income. (*Lovell v. United States* (7th Cir. 1984), 755 F.2d 517, 519.) The trial court correctly denied defendant's motions to dismiss the State's complaints.

III. THE VIOLATION OF DEFENDANT'S *MIRANDA* RIGHTS

Defendant claims that after his arrest the special revenue agents failed to advise him of his *Miranda* rights. No facts appear in the defendant's testimony or anywhere else in the record regarding the circumstances of the defendant's arrest. In addition, defendant made no statement regarding the alleged failure to file returns to the revenue agents. Therefore, *Miranda* is inapplicable to this case. See *Miranda v. Arizona* (1966), 384 U.S. 436, 444, 16 L.Ed. 694, 86 S.Ct. 1602.

IV. THE JURY VERDICT

A jury's guilty verdict will not be set aside by the reviewing court unless the evidence fails to sustain the verdict, or the evidence is so improbable that no reasonable trier of fact could believe it. (*People v. Ellis* (1978), 74 Ill. 2d 489, 384 N.E.2d 331; *People v. Hunter* (1984), 124 Ill. App. 3d 516, 525, 464 N.E.2d 659.) The defendant's failure to pay taxes was clearly willful. After conscious reflection and much study, he concluded that the federal and state income taxes were invalid and unconstitutional. Based on this conclusion, he stopped filing returns. Defen-

dant cites authority to the effect that a taxpayer who makes a good faith error with respect to liability is not in willful violation of the tax laws. (*United States v. Murdock* (1933), 290 U.S. 389, 78 L.Ed.2d 381, 54 S.Ct. 223, *overruled on other grounds, Murphy v. Waterfront Commission of New York Harbor* (1966), 378 U.S. 52, 12 L.Ed. 2d 678, 84 S.Ct. 1594.) However, this principle is inapplicable to the facts in the instant case. Defendant did not commit error in good faith. "[D]isagreement with the law does not constitute a good faith defense sufficient to negate a finding of willfulness." *United States v. Bressler* (7th Cir. 1985), 772 F.2d 287, 291.

V. THE EXCLUSION OF DEFENDANT'S LETTERS

The trial court excluded three letters the defendant claims to have sent the Illinois Department of Revenue in 1981. Because there was no proof that the letters were ever sent, the trial court refused to admit them into evidence. The trial court, however, allowed the defendant to testify broadly regarding his state of mind at the time of his failure to file returns. Because the evidentiary value of the letters was remote and speculative, it was within the discretion of the trial court to refuse to admit them. See *People v. Logan* (1980), 87 Ill. App. 3d 351, 356, 408 N.E.2d 1086, *cert. denied* (1981), 451 U.S. 1033, 68 L.Ed. 2d 229, 101 S.Ct. 1745; cf., *People v. Guyon* (1983), 117 Ill. App. 3d 522, 530, 453 N.E.2d 849.

VI. THE TRIAL COURT'S REFUSAL TO GIVE CERTAIN JURY INSTRUCTIONS

Defendant contends that the failure of the trial court to instruct the jury that the willful failure to file tax returns is a specific intent crime was error. While it is unclear whether under the Act failure to file tax returns is a specific intent crime, under federal law it is clear. Willful failure to file tax returns requires proof of an

intentional violation of a known duty. (*United States v. Pomponio* (1976), 429 U.S. 10, 12, 50 L.Ed.2d 12, 97 S.Ct. 22; *United States v. Burton* (5th Cir. 1984), 737 F.2d 439, 441.) Willfulness, however, may be proved by the presentation of properly filed past returns. (*United States v. Ferguson* (7th Cir. 1986), 793 F.2d 828, 831.) In the instant case, defendant testified to filing past returns and the proper filing of past returns was stipulated to by the parties. Consequently, even if the failure of the trial court to instruct the jury regarding willfulness was error, we hold that it was harmless beyond a reasonable doubt. Cf., *People v. Barkauskas* (1986), 147 Ill. App. 3d 360, 497 N.E.2d 1183.

Defendant also argues that the trial court's failure to give the non-IPI instruction he tendered regarding circumstantial evidence was reversible error. Because of the conclusive evidence presented in the instant case, we do not believe the jury's verdict would have been different if the circumstantial evidence instruction had been given. See *People v. Olinger* (1986), 112 Ill. 2d 324, 349-50, 493 N.E. 2d 579; *People v. Bertucci* (1980), 81 Ill. App. 3d 851, 859, 401 N.E.2d 1123.

For the above stated reasons, the judgment of the circuit court of Cook County is affirmed.

Dated at Chicago, Illinois, this 9th day of July, 1987.

PRESIDING JUSTICE MARY ANN G. McMORROW
JUSTICE MEL R. JIGANTI
JUSTICE GLENN T. JOHNSON

APPENDIX 4

No. 65907

IN THE
SUPREME COURT OF ILLINOIS

RICHARD T. DURJAK,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Appeal from the Appellate Court, First District, No. 85-1997.
There Heard on Appeal from The Circuit Court of Cook County, Municipal Department, 1st District, Nos. 831-103178 and 831-103179.
Honorable John J. McDonnell, Judge Presiding.

NOTICE OF APPEAL

RICHARD T. DURJAK, the petitioner in this court, hereby appeals to the United States Supreme Court pursuant to 28 U.S.C. 1257(2) from the order of this court dated December 22, 1987, denying DURJAK leave to appeal. DURJAK also appeals from the decision of the Illinois Appellate Court affirming DURJAK's conviction on

July 9, 1987, and from its denial of his Petition for Rehearing, dated August 24, 1987.

Respectfully submitted,

/s/ ANDREW B. SPIEGEL
Counsel for RICHARD T. DURJAK
77 West Washington Street
Suite 707
Chicago, IL 60602
(312) 782-8999

Dated: March 15, 1988

APPENDIX 5

State of Illinois
Department of Revenue
Springfield, Illinois 62701 January 7th 1981

Gentlemen:

It has come to my attention, that Income Tax on wages and salaries of United States is voluntary, but it is enforced unconstitutionally, since Illinois Income Tax is a carbon copy of federal income tax, meaning that it is governed by the Internal Revenue code to the boot, it must be voluntary too and therefore unconstitutionally enforced. I am turning to you to find out where I stand. Please answer me as soon as you can.

I found out, from various sources, that Federal Income Tax is voluntary, based on voluntary self-assessment and voluntary compliance, what that means in various dictionaries is as follows: We comply with Income Tax out of our free will, without any legal obligation whatsoever. This is very puzzling to me. How come? Why most of the people do not know about this fact? It is a fact, because I did see it with my own eyes in 1979 Annual Report of the Internal Revenue Service, made out by their Commisioner. Since our Illinois Income Tax is the same as the Federal, based on identical rules, you must know the answer to this. I have tried on several occasions to ask people in Chicago office of the revenue, but all I got was a runaround, I was not able to even get the names of the people I have talked to over the telephone, they all introduce themselves as Revenue. That is the reason I am turning to you, please answer me if it is so, that our taxes are voluntary or not, it is of utmost importance to me. And please do not send me to the Internal Revenue Service, because I have tried them too, with no luck, they do not answer any questions at all, they do not even want

to talk to a person unless you give them your Social Security number first.

I will wait very impatiently for your answer, as I said before it is very important to me to hear from you.

Thank you very much.

/s/ RICHARD T. DURJAK
Richard T. Durjak
5506 W. 22nd Place
Cicero, Illinois 60650

APPENDIX 6

State of Illinois
Department of Revenue
Springfield, Illinois 62701 September 18 1981

Gentlemen:

Some time ago I wrote a letter to your office, asking some questions about Income Tax, to this day I did not receive answer. I know that you are very busy, but it was and still is very important to me to hear from you. I am a member of Belanco Religious organization, and as such I had to claim an exempt on my W-4 form federal and state, at the request of our leader Mr. Paul Bell of Taft California, to become a member. At the same time I had to stop filing Income tax returns, as you probably know by now, again at the request of Mr. Bell.

I know, that compliance with Income tax is Voluntary so I do not feel that I am doing anything wrong by not volunteering, besides Mr. Bell told me that our wages and salaries are not taxable anyway, because if they were taxable that would mean that we are slaves and slavery is not allowed in USA. I have heard from other people, who were in Belanco organization lot longer than I that Mr. Bell goes every year to the IRS office and turns himself in, saying that he does not owe or pay any taxes, and he asks IRS to arrest him, they decline every time, I believe that the man knows what he is doing, but I would like to have your opinion on the matter too.

I have became a member of Belanco Religious order in 1980, but I knew about Voluntary filing, compliance and self-assessment long before that, I just could not believe it, that it is possible for all US citizens not to know about it, I still do not understand it why our government does not tell people, that they do not have to pay these taxes. Is there something I do not know? I love this beautiful

country very much and I want to know everything about it, so please tell me, am I wrong in listening and obeying Mr. Bells orders, to not pay tax on my salary and to claim exempt on w-4 form? And please answer my letter.

It may seem odd to you, that I am asking you these questions, but who else could answer them if not your office. I wish I knew whom I am writting to, but since you are our government, I do not think it is important who gets this letter, I am sure it will end up in right hands, but please answer me.

Thank you very much

/s/ RICHARD T. DURJAK
Richard T. Durjak
5506 W. 22 Place
Cicero, Illinois 60650

APPENDIX 7

SUPREME COURT OF THE UNITED STATES

No. A-710

RICHARD R. BURJAK

Applicant

v.

ILLINOIS

ORDER

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including April 11, 1988.

s/ JOHN PAUL STEVENS
Associate Justice of the Supreme
Court of the United States

Dated this 17th day of March, 1988.